

REMARKS

Applicants appreciate the Examiner's thorough consideration provided the present application. Claims 1-3, 5, 7-11, 13, 14, 16-21, 28-32, 34, 36 and 38 are now present in the application. Claims 6, 15, 33, 35, 37 and 39 have been cancelled. Claims 1, 11, 28 and 30 are independent. Reconsideration of this application, as amended, is respectfully requested.

Reasons For Entry Of Amendments

As discussed in greater detail hereinafter, Applicants respectfully submit that the rejections under 35 U.S.C. § 112 and 103(a) are improper and should immediately be withdrawn. Accordingly, the finality of the Final Office Action mailed on June 2, 2005 should be withdrawn.

If the Examiner persists in maintaining his rejections, Applicants submit that this Amendment was not presented at an earlier date in view of the fact that Applicants are responding to a new ground of rejection set forth in the Final Office Action. In accordance with the requirements of 37 C.F.R. §1.116, Applicants respectfully request entry and consideration of the foregoing amendments as they remove issues for appeal.

Claim Rejections Under 35 U.S.C. §112

Claims 33, 35, 37 and 39 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is respectfully traversed.

As the Examiner will note, claims 33, 35, 37 and 39 have been cancelled to timely advance the prosecution of the application. Accordingly, this rejection has been obviated and/or rendered moot. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, are therefore respectfully requested.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-3, 5-11, 13-21 and 28-39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Metz et al., U.S. Patent No. 5,666,293 (referred to hereinafter as Metz) in view of Shimomura et al., U.S. Patent No. 6,473,858 (referred to hereinafter as Shimomura). This rejection, insofar as they pertain to the present claims, is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

In light of the foregoing amendments to the claims, Applicants respectfully submit that this rejection has been obviated and/or rendered moot. Without conceding to the propriety of the Examiner's rejection, but merely to timely advance the prosecution of the application, as the Examiner will note, independent claims 1, 11, 28 and 30 have been amended.

Independent claim 1 recites a combination of elements including "a code detecting unit for detecting a software code included in an advertisement broadcasting signal during only broadcasting of an advertisement".

Independent claim 11 recites a combination of steps including "detecting a software code included in an advertisement broadcasting signal during only broadcasting of an advertisement".

Independent claim 28 recites a combination of elements including “a code detecting unit for receiving a digital advertisement broadcasting signal during only broadcasting of an advertisement”.

Independent claim 30 recites a combination of steps including “detecting a software code included in a digital advertisement broadcasting signal during only broadcasting of an advertisement”.

Support for the above combinations of elements and steps can be found on paragraph bridging pages 7 and 8. Applicants respectfully submit that the combinations of elements set forth in claim 1 and 28 and the combinations of steps set forth in claim 11 and 30 are not disclosed or suggested by the references relied on by the Examiner.

Metz discloses a set-top terminal device for storing a version number for an operating system that it is currently running, and a broadcast data stream which includes data identifying the version number of the operating system being broadcast for the particular type of terminal. In addition, the set-top terminal device actually captures an operating system from the broadcast if the broadcast version number is different (e.g. higher or lower) than the version number of the operating system that the terminal is currently running.

However, Metz fails to teach any device for or any step of detecting a software code included in an advertisement broadcasting signal *during only broadcasting of an advertisement* as recited in claims 1, 11, 28 and 30. In particular, Metz merely discloses that the DET 102 may automatically check the time or number of power-off cycles since the last upgrade to trigger an operating system upgrade routine (see col. 9, lines 21-24). Metz nowhere teaches that the DET 102 will detect a software code included in an advertisement broadcasting signal *during only*

broadcasting of an advertisement. Therefore, Metz fails to teach the combinations of elements set forth in claim 1 and 28 and the combinations of steps set forth in claim 11 and 30.

Unlike Metz, the presently embodied invention provides an apparatus and method for upgrading a software of a television broadcasting signal receiving apparatus, which is capable of improving convenience for the user by detecting the new version of software during only broadcasting of advertisements and automatically upgrading the software when the user watches the advertisements. These features are clearly absent from Metz.

With regard to the Examiner's reliance on Shimomura, this reference has only been relied on for its teachings related to the advertisement broadcasting signal. Shimomura also fails to disclose the above combinations of elements and steps as set forth in amended independent claims 1, 11, 28 and 30. Thus, Shimomura fails to cure the deficiencies of Metz, and thus the combination of these references (assuming *arguendo* that they are combinable) would not render the claimed invention obvious.

Accordingly, the present invention as recited in claims 1, 11, 28 and 30 and their dependent claims (due to their dependency) is patentable over the applied references, and the rejection should be withdrawn.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently pending rejections and that they be withdrawn.

Application No.: 10/084,446

Art Unit: 2124

Amendment After Final dated August 29, 2005

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It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

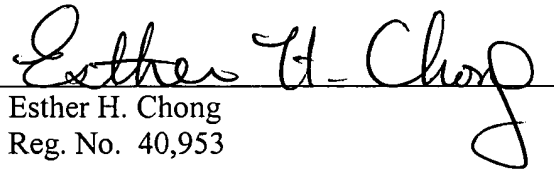
In the event there are any matters remaining in this application, the Examiner is invited to contact the undersigned at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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